SUPREME COURT OF THE UNITED STATES.

No. 330.

JACOB WIRTH, PLAINTIFF IN ERROR,

vs.

CALVIN BRANSON AND NATHAN LINDSEY.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF ILLINOIS.

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1 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the judges of the circuit court of the United States for the southern district of Illinois, greeting:

Because, in the record and proceedings, and also in the rendition of the judgment of a plea which is in the said circuit court, before you, between Jacob Wirth, plaintiff, and Calvin Branson and Nathan Lindsey, defendants, a manifest error hath happened, to the great damage of the said Calvin Branson and Nathan Lindsey, as by their complaint appears, we, being willing that the error, if any there hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you may have the same at Washington, on the first Monday of December next, in the said Supreme Court, to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein, to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness the honorable Salmon P. Chase, Chief Justice of the said Supreme Court, this sixth day of July, in the year of our Lord one thousand eight hundred and seventy-one, and of our Independence the ninety-sixth year.

[SEAL.]

J. A. JONES,
Clerk of the Circuit Court of the United States for the Southern District of Illinois.

Pleas in the circuit court of the United States of America for the southern district of Illinois, held at the city of Springfield, in said district, before the honorable David Davis, presiding judge, and the honorable Samuel H. Treat, associate judge of said circuit court, on Friday, the thirtieth day of June, in the June term of said court, in the year of our Lord one thousand eight hundred and seventy-one, and of our Independence the ninety-fifth year.

J. A. JONES, *Clerk.*

JACOB WIRTH
vs.
CALVIN BRANSON AND NATHAN LINDSEY. } In ejectment.

SOUTHERN DISTRICT OF ILLINOIS, *ss:*

Jacob Wirth, plaintiff, a citizen of the State of New York, puts in his place Mess'rs McClernand & Broadwell, his attorneys, against Calvin Branson and Nathan Lindsey, defendants, citizens, and residents of the said southern district of Illinois, in a plea of trespass and ejectment.

SOUTHERN DISTRICT OF ILLINOIS, *ss:*

Be it remembered that, heretofore, to wit, on the twenty-first day of June, in the June term of said court, in the year of our Lord one thousand eight hundred and sixty-nine, in open court, came said plaintiff, by his said attorneys, and filed in the clerk's office of said court his declaration in ejectment against the defendants, together with a notice in writing thereto attached; and also an affidavit of a due service of a

2 true copy of said declaration and notice upon the defendants; and also at the same time filed his bond for costs in said-entitled cause; which said bond for costs, declaration, notice, and affidavit are in the words and figures following, to wit:

Bond for costs.

UNITED STATES OF AMERICA,
Southern District of Illinois, ss:

Circuit court. June term, A. D. 1869.

JACOB WIRTH
vs.
CALVIN BRANSON ET AL. } In ejectment.

I do hereby enter myself security for costs in this cause, and acknowledge myself bound to pay, or cause to be paid, all costs which may accrue in this action, either to the opposite party, or to any of the officers of this court, in pursuance of the laws of this State and of the United States.

Dated this 21st day of June, 1869.

W'M E. KEEFER.

(Indorsed:) Filed June 21st, A. D. 1869. J. A. Jones, clerk.

Declaration.

UNITED STATES OF AMERICA,
Southern District of Illinois, ss:

In circuit court of said district to June term, A. D. 1869.

Jacob Wirth, the plaintiff in this suit, who is a citizen of the State of New York, one of the United States of America, by McClernand and Broadwell, his attorneys, complains of Calvin Branson and Nathan Lindsey, the defendants, who are citizens and inhabitants of the State of Illinois, one of the United States of America, of a plea, wherefore they, the said defendants, with force and arms, &c., entered into the following-described premises; for that, heretofore, to wit, on the first day of May, A. D. 1869, the said plaintiff was possessed of certain premises situated in the county of Fulton and State of Illinois, and described as follows, to wit: The northeast quarter of section eighteen (18), township four (4) north, of range two east, 4th principal meridian; and, being so possessed thereof, the said defendants afterwards, to wit, on the twentieth day of May, A. D. 1869, entered into such premises, and that they unlawfully withhold from the said plaintiff the possession thereof; and the said plaintiff avers that he claims title to said premises in fee; wherefore said plaintiff says that he is injured, and has sustained damages to a large amount, to wit, one thousand dollars. And therefore he brings suit, &c.

McCLERNAND & BROADWELL,
Att'ys for Plaintiff.

(Indorsed:) Filed June 21st, A. D. 1869. J. A. Jones, cl'k.

3 *Notice.*

To Calvin Branson and Nathan Lindsey, defendants in this suit:

Take notice—1st. That on the twenty-first day of June, A. D. 1869, and during the June term of the circuit court of the United States, within and for the southern district of Illinois, a declaration, of which the foregoing is a copy, will be filed in said court. 2nd. That upon filing the same a rule will be entered requiring you, such defendants, to appear and plead to such declaration within twenty days after the entry of such rule. 3rd. That if you neglect so to appear and plead a judgment by default will be entered against you, and the plaintiff will recover possession of the premises described in said declaration.

Dated at Springfield this second day of June, A. D. 1869.

McCLERNAND & BROADWELL,
Att'ys for Pl'ff.

(Indorsed:) Filed June 21st, A. D. 1860. J. A. Jones, cl'k.

Affidavit.

STATE OF ILLINOIS,
Fulton County, ss:

Charles Baumgarten, being duly sworn, upon oath says that he served a declaration and notice, of which the within and foregoing are copies, upon Calvin Branson and Nathan Lindsey, the above-named defendants, by delivering the same to them personally on the 11th day of June, A. D. 1869.

CHA'S BAUMGARTEN.

Subscribed and sworn to before me this 11th day of June, A. D. 1869.
[L. S.] GEO. WHITAKER,
Notary Public.

(Indorsed:) Filed June 21st, A. D. 1869. J. A. Jones, cl'k.

Whereupon, on the same day of the month, in the term and year aforesaid, the following proceedings were had in said court, in said entitled cause, and entered of record, to wit:

Order of court.

JACOB WIRTH
vs.
CALVIN BRANSON AND NATHAN LINDSEY. } In ejectment.

Now comes the plaintiff, by Messrs. McClernand and Broadwell, his attorneys, and files his declaration in ejectment against the said defendants, together with a notice in writing thereto attached, and affidavit of due service of true copies of said declaration and notice upon the defendants. Upon reading thereof it is ordered, on motion of the plaintiff, that this cause be docketed, and the defendants ruled to plead in twenty days or that their default be entered.

Afterwards, to wit, on the sixth day of July, in the term and year aforesaid, came said defendants, by S. C. Judd, esq., their attorney, and filed in said clerk's office their pleas herein; which said pleas are in the words and figures following, to wit:

4 *Pleas.*

UNITED STATES OF AMERICA:

U. S. circuit court, southern dist. of Illinois. June term, 1869.

JACOB WIRTH
vs.
CALVIN BRANSON & NATHAN LINDSEY. } Ejectment.

1. And the said defendants, by S. C. Judd, their attorney, come and defend the wrong and injury, when, &c., and say that they are not guilty of unlawfully withholding the said premises claimed by said plaintiff in manner and form as alleged in said declaration; and of this they put themselves upon the country, &c.

S. C. JUDD,
Att'y for Def'ts.

And plaintiff comes & doth the like, &c.

McCLERNAND & BROADWELL,
Att'y for Pl'ff.

2. And for further plea in this behalf the said defendants say that the said defendant Calvin Branson is not, and at the commencement of the suit was not, in possession of thirty acres off from the west side of the said premises, nor of any part thereof; nor is the said defendant Nathan Lindsey in possession of one hundred and thirty acres off the east side of said premises, nor of any part thereof, nor was he at the commencement of this suit in possession of the same or any part thereof. And this they are ready to verify, &c.

S. C. JUDD,
Def'ts' Att'y.

(Indorsed:) Filed July 6, 1869. J. A. Jones, cl'k.

Now, afterwards, to wit, on the tenth day of January, at the January term of said court, in the year of our Lord one thousand eight hundred and seventy, the following further proceedings were had in said court in said cause, and entered of record, to wit:

Order of court.

JACOB WIRTH
v.
CALVIN BRANSON ET AL. } In ejectment.

This day come the parties, by their attorneys, and the defendants withdraw their 2nd plea herein, and issue being now joined the trial of this cause by consent is submitted to the court; and the court having heard the evidence of the parties, the argument is postponed to a future day of this term.

Afterwards, to wit, on the twelfth day of January, in the term and year last aforesaid, the following further proceedings were had in said court in said-entitled cause, and entered of record, to wit:

5 *Order of court.*

JACOB WIRTH
v.
CALVIN BRANSON ET AL. } In ejectment.

This day come again the parties, by their attorneys, and the court, having heard further proof and allegations and argument of counsel thereon, takes the same under advisement.

And afterwards, to wit, on the nineteenth day of February, in the term and year last aforesaid, the following further proceedings were had in said court in said cause, and entered of record, to wit:

1st judgment.

JACOB WIRTH
v.
CALVIN BRANSON AND NATHAN LINDSEY. } In ejectemnt.

This day come again the parties, by their attorneys, and the court being now sufficiently advised in the premises, finds for the plaintiff, and that the defendants are guilty of unlawfully withholding from the plaintiff the possession of the premises in his declaration described, to wit, the northeast quarter of section eighteen (18), township four (4) north, of range two (2) east, of the fourth principal meridian, in the county of Fulton, and State of Illinois, and to which the plaintiff is entitled in fee simple. It is ordered that a writ of possession issue therefor—said writ not to issue until the further order of this court. It is therefore ordered and adjudged that the plaintiff recover of the defendants one cent damage, together with the sum of twenty-four dollars, his costs and charges by him about his suit in this behalf expended, and that he have execution therefor.

Whereupon defendants enter their motion for a new trial herein.

Now, afterwards, to wit, on the twenty-fifth day of June, at the June term of said court, of the year last aforesaid, the following other proceedings were had in said court in said cause, and entered of record, to wit:

Order of court.

JACOB WIRTH
v.
CALVIN BRANSON ET AL. } In ejectment.

This day this cause came on to be heard upon the motion for a new trial herein, and the court not being sufficiently advised in the premises, takes the same under advisement.

Then, afterwards, to wit, on the thirteenth day of July, in the term and year last aforesaid, the following further proceedings were had in said court in said cause, and entered of record, to wit:

Order of court.

JACOB WIRTH
v.
CALVIN BRANSON ET AL. } In ejectment.

This day come the defendants, by S. C. Judd, esq., their attorney, and

4 *Pleas.*

UNITED STATES OF AMERICA:

U. S. circuit court, southern dist. of Illinois. June term, 1869.

JACOB WIRTH
vs.
CALVIN BRANSON & NATHAN LINDSEY. } Ejectment.

1. And the said defendants, by S. C. Judd, their attorney, come and defend the wrong and injury, when, &c., and say that they are not guilty of unlawfully withholding the said premises claimed by said plaintiff in manner and form as alleged in said declaration; and of this they put themselves upon the country, &c.

S. C. JUDD,
Att'y for Def'ts.

And plaintiff comes & doth the like, &c.

McCLERNAND & BROADWELL,
Att'y for Pl'ff.

2. And for further plea in this behalf the said defendants say that the said defendant Calvin Branson is not, and at the commencement of the suit was not, in possession of thirty acres off from the west side of the said premises, nor of any part thereof; nor is the said defendant Nathan Lindsey in possession of one hundred and thirty acres off the east side of said premises, nor of any part thereof, nor was he at the commencement of this suit in possession of the same or any part thereof. And this they are ready to verify, &c.

S. C. JUDD,
Def'ts' Att'y.

(Indorsed:) Filed July 6, 1869. J. A. Jones, cl'k.

Now, afterwards, to wit, on the tenth day of January, at the January term of said court, in the year of our Lord one thousand eight hundred and seventy, the following further proceedings were had in said court in said cause, and entered of record, to wit:

Order of court.

JACOB WIRTH
v.
CALVIN BRANSON ET AL. } In ejectment.

This day come the parties, by their attorneys, and the defendants withdraw their 2nd plea herein, and issue being now joined the trial of this cause by consent is submitted to the court; and the court having heard the evidence of the parties, the argument is postponed to a future day of this term.

Afterwards, to wit, on the twelfth day of January, in the term and year last aforesaid, the following further proceedings were had in said court in said-entitled cause, and entered of record, to wit:

5 *Order of court.*

JACOB WIRTH
v.
CALVIN BRANSON ET AL. } In ejectment.

This day come again the parties, by their attorneys, and the court, having heard further proof and allegations and argument of counsel thereon, takes the same under advisement.

And afterwards, to wit, on the nineteenth day of February, in the term and year last aforesaid, the following further proceedings were had in said court in said cause, and entered of record, to wit:

1st judgment.

JACOB WIRTH
v.
CALVIN BRANSON AND NATHAN LINDSEY. } In ejectemnt.

This day come again the parties, by their attorneys, and the court being now sufficiently advised in the premises, finds for the plaintiff, and that the defendants are guilty of unlawfully withholding from the plaintiff the possession of the premises in his declaration described, to wit, the northeast quarter of section eighteen (18), township four (4) north, of range two (2) east, of the fourth principal meridian, in the county of Fulton, and State of Illinois, and to which the plaintiff is entitled in fee simple. It is ordered that a writ of possession issue therefor—said writ not to issue until the further order of this court. It is therefore ordered and adjudged that the plaintiff recover of the defendants one cent damage, together with the sum of twenty-four dollars, his costs and charges by him about his suit in this behalf expended, and that he have execution therefor.

Whereupon defendants enter their motion for a new trial herein.

Now, afterwards, to wit, on the twenty-fifth day of June, at the June term of said court, of the year last aforesaid, the following other proceedings were had in said court in said cause, and entered of record, to wit:

Order of court.

JACOB WIRTH
v.
CALVIN BRANSON ET AL. } In ejectment.

This day this cause came on to be heard upon the motion for a new trial herein, and the court not being sufficiently advised in the premises, takes the same under advisement.

Then, afterwards, to wit, on the thirteenth day of July, in the term and year last aforesaid, the following further proceedings were had in said court in said cause, and entered of record, to wit:

Order of court.

JACOB WIRTH
v.
CALVIN BRANSON ET AL. } In ejectment.

This day come the defendants, by S. C. Judd, esq., their attorney, and

enter their motion to set aside the judgment rendered in this cause
6 on the nineteenth day of February, A. D. 1870, and for a new trial at common law; and the court being sufficiently advised in the premises, sustains said motion, and this cause is continued.

Afterwards, to wit, on the twenty-fourth day of January, at the January term of said court, in the year of our Lord one thousand eight hundred and seventy-one, the following further proceedings were had in said court in said cause, and entered of record, to wit:

Order of court.

JACOB WIRTH
v.
CALVIN BRANSON ET AL. } In ejectment.

It is ordered by the court that this cause be continued for trial by full bench.

And afterwards, to wit, on the twenty-seventh day of said January, in the term and year last aforesaid, the following further proceedings were had in said court in said cause, and entered of record, to wit:

Order of court.

JACOB WIRTH
v.
CALVIN BRANSON ET AL. } In assumpsit.

On motion of plaintiff, by Mess'rs McClernand and Broadwell, his attorneys, leave is granted to return deed from Eli B. Clemson and Ann M. Clemson to John Shaw to General Land Office, upon filing a copy of the same herein.

Now afterwards, to wit, on the thirtieth day of June, at the June term of said court of the year last aforesaid, the following further proceedings were had in said court in said cause, and entered of record, to wit:

2nd judgment.

JACOB WIRTH
v.
CALVIN BRANSON AND NATHAN LINDSEY. } In ejectment.

This day comes as well the plaintiff, by Mess'rs McClernand and Broadwell, his attorneys, as the defendants, by S. C. Judd, esq., their attorney, and, issue being joined, whereupon comes a jury of good and lawful men, to wit, O. B. Heistand, Isaac Pilcher, John Busher, Asahel Coe, Adam A. Goodrich, William S. Hurst, Patrick Conner, Zachariah Maxcy, Jacob Alyea, James C. Minton, William C. Griffith, and Henry Seibert, duly elected, tried, and sworn to try said issue, and, having heard the evidence and argument of counsel, for verdict say, "We, the jury, find the issue for the plaintiff, and that the defendants are guilty of unlawfully withholding from the plaintiff the possession of the real estate and premises in his declaration described, to wit, 'the north-
7 east quarter of section eighteen (18), township four (4) north, of range two (2) east of the fourth (4th) principal meridian, in the county of Fulton, and State of Illinois, and to which the plaintiff is entitled in fee-simple.'"

Whereupon the defendants enter their motion for a new trial herein, which, being heard by the court, is overruled.

It is, therefore, ordered and adjudged by the court, that the plaintiff recover of defendant possession of said premises, according to the force and effect of said recovery, and that a writ of possession issue therefor.

It is also ordered that the plaintiff recover of the defendants the sum of one cent damages, together with the sum of thirty dollars and ninety cents, his costs and charges, by him about his suit in this behalf expended, and that execution issue therefor.

Then, afterwards, to wit, on said thirtieth day of June, of the year last aforesaid, came again said defendants, by S. C. Judd, esq., their attorney, and filed in the clerk's office of said court their bill of exceptions herein; which said bill of exceptions is in the words and figures following, to wit:

Bill of exceptions.

UNITED STATES OF AMERICA:

Circuit court of the United States for the southern district of Illinois.
June term, A. D. 1871.

JACOB WIRTH
vs.
CALVIN BRANSON & NATHAN LINDSEY. } Ejectment.

Be it remembered that, at the trial of this cause at the present term of this court, before the court and a jury, the plaintiff, to sustain the issues on his part, offered and read in evidence to the jury a patent from the United States to Edward F. Leonard for the northeast quarter of section number eighteen (18), in township number four (4) north of the base line of range two (2) east of the fourth principal meridian, "in the district of lands subject to sale at Springfield, Illinois," which patent bears date on the 20th day of February, A. D. 1868. The said plaintiff thereupon offered and read in evidence to the jury a deed for the same tract of land from Edward F. Leonard to the plaintiff, Jacob Wirth, dated the 24th day of April, A. D. 1869.

And here the plaintiff rested his case.

The defendants, to sustain the issues on their part, offered and read in evidence to the jury, a duly-exemplified copy of a land warrant, No. 13598, and of a memorandum and indorsement thereon, exemplified and authenticated by the Commissioner of the General Land Office, June 1st, 1870; which land warrant and memorandum and indorsement thereon, read as follows:

"No. 13598. Giles Egerton, sergeant 26 Infantry.

"No. 13598. Pursuant to the second section of an act of Congress, passed the 6th of May, 1812, authorizing the Secretary of War to issue land warrants to the non-commissioned officers and soldiers enlisted in the service of the United States, conformably to the acts of the
8 24th of December, 1811, and the 11th of January, 1812, Giles Egerton, late a sergeant in the company commanded by Captain Salmon C. Cotton, of the 26 Regiment United States Infantry, is entitled to one hundred and sixty acres of land, to be located agreeably to the said act on any unlocated parts of the six millions of acres appropriated

by law for the original grantees of such military warrants; and this warrant is not assignable or transferable in any manner whatever.

"Given at the War Office of the United States, this 3 day of December, A. D. one thousand eight hundred and seventeen.

"GEO. GRAHAM,
"*Acting Secretary of War.*

"Registered.

"NAT. CUTTING, *Clerk.*"

(Endorsed:)
"Loc'd 10 Jan'y, 1818, Ill's, page 474."

The defendant then proved by an exemplification of the records of the General Land Office, at Washington, that the said above land warrant was located according to law, on the 10th of January, A. D. 1818, in favor of said Giles Egerton (serg't', &c., Cotton's company, of the 26th Regiment of Infantry), on the said northeast quarter of section eighteen, township four north, range two east fourth principal meridian, in the military bounty lands in Illinois.

Said defendant thereupon offered and read in evidence to the jury an exemplified copy (from the record of "Illinois military bounty land patents" in the General Land Office, at Washington,) of a patent from the United States to said Giles Egerton, dated the 10th day of January, A. D. 1818, granting to said Giles Egerton the said "northeast quarter of section eighteen (18) of township four (4) north, in range two (2) east, in the tract appropriated by acts of Congress for military bounties in the Territory of Illinois." The said patent recites "that, in pursuance of acts of Congress, appropriating and granting land to the late Army of the United States, passed on and since the sixth day of May, 1812, Giles Egerton having deposited in the General Land Office a warrant in his favor, numbered 13598, there is granted unto the said Giles Egerton, late a sergeant in Cotton's Co. of the 26th Reg't of Infantry, a certain tract of land containing one hundred and sixty acres, being the northeast quarter of section eighteen," &c., as above described.

On the margin of the said exemplified copy of said patent is a memorandum, copied as follows, viz: "(Endorsed:) This patent was iss'd for the S. E. ¼, instead of the N. E. ¼, as recorded; sent certificate of that fact to E. B. Clemson, at Lebanon, Ill's. See his letter of 19 May, 1826."

(The word "Endorsed" in said memorandum is in black ink, and the rest of the memorandum is in red ink.)

The defendants objected to the reading of said memorandum in evidence, but the court permitted it to read to the jury at the instance of the plaintiff, and the defendant excepted.

The said defendants then offered and read in evidence a deed, dated the 29th day of July, A. D. 1819, from said Giles Egerton to Thomas Hart, duly recorded in the recorder's office of the county in which the land was situated, on the 3rd day of January, 1820, and which deed grants to said Hart, from and by said Egerton, real estate by the following description, viz: "The southeast quarter of section eighteen,
9 of township four north, in range two east, in the tract appropriated by the acts of Congress to the late Army of the United States, in the State (once the Territory) of Illinois, which q'r section was granted to the said Giles in consideration of his military services, as will appear by a patent obtained from the General Government, dated the 10th day of January, A. D. 1818."

The defendants then offered and read in evidence to the jury an exemplified copy of a patent from the United States to James Durney, dated on the 7th day of January, A. D. 1818, granting to said "James Durney, late a private in Oglevie's Company, of the 13th Regiment of Infantry," the southeast quarter of section eighteen, of township four north, in range two east, in the tract appropriated (by the acts aforesaid) for military bounties in the Territory of Illinois."

Said patent refers to the deposit, &c., of land warrant No. 5144, &c., as the basis of the grant.

The defendants thereupon offered and read in evidence to the jury a deed from the sheriff of Fulton County, Illinois (in which county the and is located), to Timothy Gridley, dated November 14th, A. D. 1843 and recorded in the recorder's office of said county, on the 30th day of September, A. D. 1845), for the northeast quarter of said section eighteen, township four north, range two east of the fourth principal meridian, in Fulton County, Illinois, for the taxes, &c., for the year 1839, and under a judgment for same at the June term, 1840, of the circuit court of Fulton County, Illinois, aforesaid. And said defendants also offered and read in evidence to the jury several mesne conveyances from said Timothy Gridley to themselves, inclusive, for said northeast quarter of section eighteen aforesaid, by which whatever title or right said Gridley acquired under said sheriff's deed was regularly conveyed to them (said defendants), the said title and rights having been conveyed to them, said defendants, in February, 1849. And the said defendants also proved that they and their grantors had occupied, cultivated, and had full and undisturbed possession of the whole of said quarter-section ever since November, 1843, the whole thereof being under fence and cultivation; and that for the years 1844 to 1868, inclusive, they and their grantors paid all the taxes and assessments levied or assessed on or against said land, they and their grantors paying respectively, when they respectively owned and held said land under such title.

It was proved that the land in controversy was worth more than $2,000. And here the defendants rested their case.

The plaintiff then offered in evidence a certified copy of a deed from Thomas Hart to Samuel F. Hunt, dated the 12th day of May, A. D. 1824; also, a certified copy of a deed from Samuel F. Hunt to Eli B. Clemson, dated the 7th day of April, A. D. 1825, each for "the southeast quarter of section eighteen (18), township four north, range two east, in the tract appropriated for military bounties in the Territory, now State, of Illinois." To the reading in evidence of each or either of said deeds, the defendants then and there objected at the time such deeds were offered, respectively, as being irrelevant and incompetent, and as affording no proof bearing upon the matter in controversy; but the court overruled said objection as to each of said deeds, and permitted both of them to be read in evidence to the jury, which was done. To which decisions and ruling, as to each of said deeds, the defendants excepted at the time the decisions and rulings were respectively made.

The plaintiff then offered in evidence a deed from Eli B. Clemson and Ann M. Clemson, his wife, to John Shaw, dated the 20th day of October, A. D. 1829, for the said southeast quarter of section eighteen, above described. To the reading of which said deed in evidence, the defendants then and there objected as being irrelevant and incompetent; but the court overruled the objection and permitted said deed to be read in evidence to the jury. To which ruling and decision the defendants did then and there except.

Said deed from Thomas Hart to Samuel F. Hunt was recorded June

28th, 1825, and said deed from Samuel F. Hunt to said Elias B. Clemson was recorded June 20th, A. D. 1825, but said deed from Eli B. Clemson and wife to John Shaw was never recorded. The plaintiff then offered in evidence the following act of Congress (to be found in volume 6 of United Statutes at Large, Private Laws, at page 366), approved March 3, 1827, viz:

"An act for the relief of the legal representatives of Giles Egerton.

"Be it enacted, &c., That the legal representative or assignee of Giles Egerton, late a sergeant in Colton's Company of the Twenty-sixth Regiment of Infantry, be, and he or they is or are hereby, authorized to enter with the register of the proper land office, any unappropriated quarter-section of land in the tract reserved for the satisfaction of military bounties in the State of Illinois, in lieu of the quarter patented to the said Giles on the tenth day of January, one thousand eight hundred and eighteen, which had been previously patented to James Durney, and upon such entry a patent shall issue to such representative or assignee for the quarter-section so selected. Approved March 3, 1827."

To the reading of which act in evidence, the defendants objected, when the same was so offered, as being irrelevant and incompetent; but the court overruled such objection and permitted said act to be read in evidence to the jury. To which decision and ruling the defendants did then and there except.

The plaintiff thereupon proved that John Shaw, on the 6th day of April, A. D. 1838, entered with the register of the land office at Quincy, Illinois, the N. W. ¼ 28, T. 5 N., R. 5 W. of the 4th P. M., in pursuance of the foregoing act of Congress. But the defendants, at the time such proof was offered, objected to the same; but the court overruled the objection and permitted such proof to go to the jnry. To which decision and ruling the defendants did then and there except. And here plaintiff again rested.

And this was all the evidence offered or heard on behalf of either of the parties in the case.

The court thereupon gave to the jury, at the plaintiff's request, and against the objections of the defendants, the following instructions, viz: "The jury are instructed that the plaintiff has, by legal evidence, shown title in himself in fee-simple; and that the defendants have not shown outstanding titles in Giles Ederton, or any one claiming under him; and the plaintiff is therefore entitled to recover."

To the giving of which instruction to the jury, the defendants then and there excepted. And the defendants then asked the court to give to the jury the following instructions, viz:

"1. The jury are instructed that the defendants have proven that the land in controversy (namely, the N. E. ¼ sec. 18, township 4 north, range 2 east, in the Illinois military bounty tract) was granted by the United States to Giles Egerton, on the 10th of January, 1818, and that said Giles Egerton, in July, 1819, granted and conveyed the same to Thomas Hart, which conveyances constitute an outstanding
11 title that defeats the plaintiff's right of recovery, and the verdict should be for the defendants.

"2. The jury are also instructed that the defendants have shown that, on the 10th day of January, A. D. 1818, the land warrant in favor of Giles Egerton was duly located on and upon the land in controversy, which location is not shown to have been vacated or set aside; therefore

said tract of land was not subject to entry by or grant to Edward F. Leonard, in 1868, and the finding should be not guilty."

But the court refused to give such instructions, or either of them, to the jury; to which refusal the said defendants did then and there except. The jury thereupon rendered a verdict of guilty, in favor of the plaintiff; to which the defendants then and there excepted. The defendants thereupon moved the court for a new trial, and assigned as reasons therefor the following:

1st. The court admitted improper evidence on behalf of the plaintiff.

2nd. The court gave an improper instruction to the jury, at the instance of the plaintiff.

3rd. The court improperly refused to give to the jury the instructions asked by the defendants.

4th. The verdict of the jury is against the law and the evidence.

But the court overruled the said motion for a new trial and refused to grant the same; to which ruling and decision the defendants did then and there except. And the court thereupon rendered judgment upon the verdict and that the plaintiff may have a writ of possession therefor, and for one cent damages, and also for costs of suit against the defendants; to all which said defendants did then and there except. And because these matters do not sufficiently appear of record, the defendants pray that this their bill of exceptions may be signed and sealed and made of record; which is accordingly done.

S. H. TREAT. [SEAL.]

(Indorsed:) Filed June 30th, 1871. J. A. Jones, cl'k.

Then, afterwards, to wit, on the sixth day of July, in the year last aforesaid, came again said defendants, by S. C. Judd, esq., their attorney, and filed in said clerk's office their bond herein; which said bond is in the words and figures following, to wit:

Bond.

Supreme Court of the United States.

CALVIN BRANSON AND NATHAN LINDSEY, plaintiffs in error, *vs.* JACOB WIRTH, DEFENDANT IN ERROR. } Ejectment. In error.

Know all men by these presents that we, Calvin Branson and Nathan Lindsey, principals, and S. Corning Judd, surety, are held and firmly bound unto the above-named Jacob Wirth, in the sum of one thousand dollars, to be paid to the said Jacob Wirth, his executors or administrators; to which payment, well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents, sealed with our seals, and dated this thirtieth day of June, A. D. 1871.

12 Whereas the above-named Calvin Branson and Nathan Lindsey have prosecuted a writ of error to the Supreme Court of the United States to reverse the judgment rendered in a suit in ejectment in favor of the above-named Jacob Wirth, as plaintiff, and against the said above-named Calvin Branson and Nathan Lindsey, as defendants, in and by the circuit court of the United States for thesouthern district of Illinois:

Now, therefore, the condition of this obligation is such, that if the said above-named Calvin Branson and Nathan Lindsey shall prosecute said writ of error to effect, and shall answer all damages and costs if they shall fail to make good their plea, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

CALVIN BRANSON. [SEAL.]
NATHAN LINDSEY. [SEAL.]
S. CORNING JUDD. [SEAL.]

Sealed and delivered in presence of—
W'M J. DYCKES, *of Lewistown, Ill's.*

(Indorsed:) Filed July 6th, 1871. J. A. Jones, clerk.

Circuit court of the United States for the southern district of Illinois, ss:

I, J. A. Jones, clerk of the circuit court of the United States in and for the said southern district of Illinois, do hereby certify the foregoing to be a true and complete transcript of the papers filed and proceedings thereon had in a certain cause wherein Jacob Wirth is plaintiff, and Calvin Branson and Nathan Lindsey are defendants, as truly and completely as the same appear of file and record in my said office.

In witness whereof I have hereunto set my hand and seal of said court, at Springfield, in said district, this twenty-fifth day of September, in the year of our Lord one thousand eight hundred and seventy-one, and of our Independence the ninety-sixth year.

[SEAL.] J. A. JONES, *Clerk.*

[5-c't int. rev. stamp, canceled.]

UNITED STATES OF AMERICA, *ss:*

To JACOB WIRTH, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the first Monday of December next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the southern district of Illinois, wherein Calvin Branson and Nathan Lindsey are plaintiffs, and you are defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness Samuel H. Treat, district judge of the United States for the southern district of Illinois, and one of the judges of the circuit court of the United States for said district, this sixth day of July, in the year of our Lord one thousand eight hundred and seventy-one, and of our Independence the ninety-sixth year.

S. H. TREAT,
District Judge.

(Indorsed:) Circuit court United States, southern district of Illinois. Jacob Wirth vs. Calvin Branson and Nathan Lindsey. Citation.

13 I hereby return this writ, and certify that I have duly executed the same by reading it to John A. McClernand and N. M. Broadwell, who are the attorneys of the within-named Jacob Wirth, this 25th day of September, A. D. 1871.

JOHN L. ROULT,
U. S. Marshal So. Dist. Ill.,
By JAMES E. HILL, *Deputy.*

Service, $4.00.

Supreme Court of the United States. December term, A. D. 1871.

CALVIN BRANSON AND NATHAN LINDSEY, pl'ffs in error, *vs.* JACOB WIRTH, DEF'T IN ERROR. } In error.

Error to the circuit court of the United States for the southern district of Illinois.

Appearance and assignment of errors.

And now come the said plaintiffs in error, Calvin Branson and Nathan Lindsey, by S. Corning Judd, their attorney, and enter their appearance in said proceeding by writ of error in the said Supreme Court of the United States, and say that, in the record and proceedings aforesaid, and also in the judgment aforesaid of the said circuit court of the United States for the southern district of Illinois, as in and by the same record, proceedings, and judgment foregoing doth appear, manifest error hath intervened, to the great damage of them, the said Calvin Branson and Nathan Lindsay. And for assignment of errors the said plaintiffs in error set forth and show the following, that is to say.

First. The court below erred in admitting to the jury improper evidence on behalf of the plaintiff below.

Second. The said circuit court erred in giving to the jury the instruction asked and given on behalf of the plaintiff below.

Third. The said circuit court erred in refusing to give to the jury the instructions asked by the defendants below.

Fourth. The court below erred in overruling the motion of the defendants below for a new trial.

Fifth. The court below erred in rendering judgment on the verdict of the jury.

Sixth. The record, proceedings, and judgment aforesaid are otherwise irregular, erroneous, informal, and insufficient, &c.

Wherefore the said plaintiffs in error pray that the record, proceedings, and judgment aforesaid may be reviewed, and the said judgment reversed, annulled, and altogether for nothing held; and that they may have such other or further order of this honorable court upon and touching the same as by law they may be entitled to have in the premises, &c.

S. CORNING JUDD,
Of Lewistown, Ill's, Attorney for Pl'ffs in Error.

(Indorsed:) Appearance and assignment of error.

(Indorsement on cover:) No. 567. Calvin Branson & Nathan Lindsey, plaintiffs in error, vs. Jacob Wirth. S. Illinois C. C. U. S. Filed 30th September, 1871.

14 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the judges of the circuit court of the United States for the southern district of Illinois, greeting:

Because in the record and proceedings, and also in the rendition of a judgment in a plea which is in the said circuit court before you or some of you, between Jacob Wirth, plaintiff, and Calvin Branson and Nathan Lindsey, defendants, a manifest error hath happened, to the great damage of the said Jacob Wirth, as by his complaint appears; and it being fit that the error, if any there hath been, should be duly corrected, and

full and speedy justice done to the parties aforesaid in this behalf, you are hereby commanded, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October next, in the
15 said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to law and custom of the United States should be done.

Witness the Hon. Morrison R. Waite, Chief Justice of the Supreme Court of the United States of America, this fourth day of August, in the year of our Lord one thousand eight hundred and seventy-five, and of our Independence the one hundredth year.

[SEAL.] J. A. JONES,
Clerk of the Circuit Court of the United States for the Southern District of Illinois.

(Indorsed:) United States Supreme Court. Jacob Wirth, plaintiff in error, vs. Calvin Branson and Nathan Lindsey, defendants in error. Writ of error. Filed August 4, 1875. J. A. Jones, clerk.

16 UNITED STATES OF AMERICA, *ss:*

To Calvin Branson and Nathan Lindsey, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the southern district of Illinois, wherein Jacob Wirth is plaintiff, and you are defendants in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness Samuel H. Treat, district judge of the United States for the southern district of Illinois, and one of the judges of the circuit court of the United States for said district, this fourth day of August, in the year of our Lord one thousand eight hundred and seventy-five, and of our Independence the one hundredth year.

S. H. TREAT,
District Judge.

I accept service of the within writ for the within-named defendants, Calvin Branson and Nathan Lindsey, this 29th day of Sept., 1875.

S. CORNING JUDD,
Defendants' Att'y.

(Indorsed:) Supreme Court of United States. Jacob Wirth, plaintiff in error, v. Calvin Branson and Nathan Lindsey. Citation.

17 Pleas in the circuit court of the United States of America for the southern district of Illinois, held at the city of Springfield, in said district, before the honorable David Davis, one of the associate justices of the Supreme Court of the United States, presiding judge, and the honorable Samuel H. Treat, district judge of said district, on Wednesday, the twenty-third day of June, in the June term of said court, in the year of our Lord one thousand eight hundred and seventy-five, and of our Independence the ninety-ninth year.

J. A. JONES, *Clerk.*

JACOB WIRTH
v.
CALVIN BRANSON, AND NATHAN LINDSEY. } Ejectment.

Be it remembered that on the eighth day of November, in the year of our Lord one thousand eight hundred and seventy-three, came again the defendants, by S. C. Judd, esq., their attorney, and filed in the
18 clerk's office of said circuit court of the United States a mandate from the Supreme Court of the United States, which said mandate is in the words and figures following, to wit:

Mandate.

UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable the judges of the circuit court of the United States for the southern
[L. S.] district of Illinois, greeting:

Whereas lately, in the circuit court of the United States for the southern district of Illinois, before you, or some of you, in a cause between Jacob Worth, plaintiff, and Calvin Branson and Nathan Lindsey, defendants, wherein the judgment of the said circuit court, entered in said cause on the 30th day of June, A. D. 1871, is in the following words, viz:

"It is ordered and adjudged by the court that the plaintiff recover of defendant possession of said premises, according to the force and effect of said recovery, and that a writ of possession issue therefor. It is also ordered that the plaintiff recover of the defendants the sum of
19 one cent damages, together with the sum of thirty dollars and ninety cents, his costs and charges by him about his suit in this behalf expended, and that execution issue therefor," as by the inspection of the transcript of the record of the said circuit court, which was brought into the Supreme Court of the United States by virtue of a writ of error, agreeably to the act of Congress in such case made and provided, fully and at large appears. And whereas, in the present term of December, in the year of our Lord one thousand eight hundred and seventy-two, the said cause came on to be heard before the said Supreme Court, on the said transcript of record, and was argued by counsel: On consideration whereof, it is now here ordered and adjudged by this court that the judgment of the said circuit court in this cause be, and the same is hereby, reversed, with costs, and that the said defendants recover against the said plaintiff, Jacob Wirth, twenty dollars for their costs, herein expended, and have execution therefor. And it is further ordered that this cause be, and the same is hereby,
20 remanded to the said circuit court, with directions to award a venire facias de novo.

"3d March, 1873."

You therefore are hereby commanded that such execution and further proceedings be had in said cause in conformity to the opinion and judgment of this court as according to right and justice and the laws of the United States ought to be had, the said writ of error notwithstanding.

Witness the honorable Salmon P. Chase, Chief Justice of said Supreme Court, the first Monday of December, in the year of our Lord one thousand eight hundred and seventy-two.

Costs of defendants: Clerk, p'd by pl'ffs; attorney, $20.00—$20.00, taxed by—

D. W. MIDDLETON,
Clerk of the Supreme Court of the United States..

(Indorsed:) Filed November 8th, A. D. 1873. J. A. Jones, cl'k.

Afterwards, to wit, on the twenty-third day of February, in the
21 January term of said circuit court of the United States for the southern district of Illinois, in the year of our Lord one thousand eight hundred and seventy-four, the following proceedings were had in said court in said cause and entered of record, to wit:

Order to reinstate.

JACOB WIRTH
v.
CALVIN BRANSON ET AL. } Ejectment.

On motion of defendants, by S. C. Judd, esq., it is ordered that this cause be reinstated upon the docket. It is further ordered to be continued.

And afterwards, to wit, on the eleventh day of January, in the January term of said circuit court, in the year of our Lord one thousand eight hundred and seventy-five, the following further proceedings were had in said court in said cause, and entered of record, to wit:

Order for hearing.

JACOB WIRTH
v.
CALVIN BRANSON ET AL. } Ejectment.

By consent of parties, by their attorneys, this cause is set for
22 hearing on Monday, the 25th day of January inst.

Then afterwards, to wit, on the twenty-second day of June, in the June term of said court in the year last aforesaid, the following further proceedings were had in said court in said cause, and entered of record, to wit:

Trial by jury.

JACOB WIRTH
v.
CALVIN BRANSON AND NATHAN LINDSEY. } Ejectment.

This day comes as well the plaintiff, by Mess'rs McClernand and Broadwell, his attorneys, as the defendants, by S. C. Judd, esq., their attorney, and the issue being joined, whereupon comes a jury of good and lawful men, to wit, James L. Carson, John Carson, Andrew J. Holcomb, N. V. Hunt, Patrick O'Connor, D. S. Lombard, Thomas E. Harris, William M. Wilkinson, Presco Wright, Thomas J. Larison, Charles C. Hoppe, and L. M. Snell, duly elected, tried, and sworn to try said
23 issue, and having heard the evidence, argument of counsel, and received the instructions of the court, retire to consider of their verdict.

And afterwards, to wit, on the twenty-third day of June, in the June term of said court, in the year last aforesaid, the following further proceedings were had in said court in said cause, and entered of record, to wit:

Verdict.

JACOB WIRTH
v.
CALVIN BRANSON AND NATHAN LINDSEY. } Ejectment.

This day come again the parties, by their attorneys, and also the jury impanelled and sworn herein, who for verdict say, "We, the jury, find the issue for the defendants, and that they are not guilty of unlawfully withholding from the plaintiff the possession of the real estate and premises in the plaintiff's declaration described, or of the trespasses in ejectment therein mentioned."

Whereupon the plaintiff enters his motion for a new trial herein, which being heard by the court is overruled.

24 It is therefore ordered that the plaintiff take nothing for his writ, that the defendants go hence without day and recover of the plaintiff the sum of dollars and cents, their costs and charges by them about their defence in this behalf expended, and that execution issue therefor.

Thereupon the plaintiff tenders his bill of exceptions, which is signed, sealed, and ordered by the court to be made part of the record herein.

Bill of exceptions.

In the circuit court of the United States within and for the southern district of Illinois. June term, A. D. 1875.

UNITED STATES OF AMERICA:

JACOB WIRTH
vs.
CALVIN BRONSON AND NATHAN LINDSEY. } Ejectment.

Be it remembered that at the trial of this cause at the present term of this court before the court and a jury, the plaintiff, to sustain the issues on his part, offered and read in evidence to the jury a patent in regular

25 form issued by the United States to Edward F. Leonard, granting to said Leonard and his heirs the northeast quarter of section number eighteen (18) in township number four (4) north, of range number two (2) east, fourth (4th) principal meridian, in the district of lands subject to sale at Springfield, Illinois, which patent bears date on the 20th day of February, A. D. 1868; and that thereupon the said plaintiff offered and read in evidence to the jury a deed in due form, dated and properly acknowledged on the 24th day of April, A. D. 1869, conveying said tract of land to the plaintiff.

And here the plaintiff rested.

Then the defendants, to sustain the issues on their part, offered and read in evidence to the jury a duly exemplified copy of a land-warrant No. 13,598 and of a memorandum and indorsement thereon exemplified and authenticated by the Commissioner of the General Land Office, June 1st, 1870, as follows:

"No. 13598. Giles Egerton, sergeant 26 Infantry.

"Pursuant to the second section of an act of Congress passed the 6th of May, 1812, authorizing the Secretary of War to issue land-warrents to non-commissioned officers and soldiers enlisted in the
26 service of the United States conformably to the acts of the 24th of December, 1811, and the 11th of January, 1812. Giles Egerton, late a sergeant in the company commanded by Captain Salmon C. Cotton, of the 26 Regiment United States Infantry, is entitled to one hundred and sixty acres of land, to be located agreeably to said act on any unlocated parts of the six millions of acres appropriated by law for the original grantees of such military warrants; and this warrant is not assignable or transferable in any manner whatever.

"Given at the War Office of the United States this 3d day of December, A. D. one thousand eight hundred and seventeen.

"GEO. GRAHAM,
"*Acting Secretary of War.*

"Registered.

"NAT. CUTTING, *Clerk.*"

(Endorsed:)
"Loc'd 10 Jan'y, 1818. Ills., page 474."

The defendants then proved by an exemplified record of the General Land Office at Washington that the aforesaid land warrant was located according to law on the 10th day of January, A. D. 1818, by Giles
27 Egerton, on the said northeast quarter of aforesaid section eighteen (18).

The defendants thereupon offered and read in evidence to the jury an exemplified copy from the records of General Land Office of a patent from the United States to Giles Egerton, dated 10th of January, A. D. 1818, granting to said Egerton the northeast quarter of aforesaid section eighteen (18). The said copy of patent recites "that in pursuance of acts of Congress appropriating and granting lands to the late Army of the United States, passed on and since the 6th day of May, 1812, Giles Egerton having deposited in the General Land Office a warrant in his favor, numbered 13598, there is granted unto the said Giles Egerton, late a sergeant in Cotton's Co. of the 26th Reg't of Infantry, a certain tract of land containing 160 acres, being the northeast quarter of section eighteen," &c., above described.

On the margin of which exemplified copy of said patent (and as part of said exemplification) is a memorandum as follows: (Endorsed:) "This patent was iss'd for the S. E. ¼, instead of the N. E ¼, as recorded; sent a certificate of that fact to E. B. Clemson, at Lebanon, Ill's; see his letter of 19th May, 1826." The word "Endorsed" in the memorandum is in black ink and the rest of the memorandum is in red ink. The
28 plaintiff insisted upon said memorandum being read to the jury as a part of said exemplification, but on objection by defendants to such reading of said memorandum, the court refused to allow the same to be read to the jury and excluded the same, and plaintiff excepted.

Said defendants then offered and read in evidence a deed, dated 29th day of July, A. D. 1819, from Giles Egerton to Thomas Hart, duly recorded, &c., and which deed grants to said Hart, from and by said Egerton, the following described land, to wit: "The southeast quarter of section eighteen (18), of township four (4) north, in rage two (2) east, &c.,

which qr. section was granted to the said Giles in consideration of his military services, as will appear by a patent obtained from the General Government, dated 10th day of January, A. D. 1818."

The defendants then offered and read in evidence to the jury an exemplified copy of a patent from the United States to James Durney, dated on 7th day of January, A. D. 1818, granting to said "James Durney, late a private in Oglevie's company, of the 13th Regiment of Infantry," the southeast quarter of section eighteen, of township
29 four (4) north, in range two (2) east, in the tract appropriated for military bounties, in the Territory of Illinois." Said patent recites the deposit, &c., of the land-warrant No. 5144, &c., as the basis of the grant.

The defendants thereupon offered and read in evidence to the jury a deed from the sheriff of Fulton County, Illinois (in which county the land is located), to Timothy Gridley, dated November 14th, A. D. 1843, for the northeast quarter of aforesaid section eighteen, in Fulton County, Illinois, for the taxes, &c., for the year 1839, and under a judgment for same at the June term, 1840, of the circuit court of Fulton County, Illinois, aforesaid.

And said defendants also offered and read in evidence to the jury several mesne conveyances from said Timothy Gridley to themselves, inclusive of said northeast quarter of aforesaid section eighteen, by which whatever title or right said Gridley acquired under said sheriff's deed was conveyed to them, the said title and rights having been conveyed to the defendants in February, 1849; and the said defendants also proved that they and their grantors had occupied, cultivated, and had full and undisturbed possession of the whole of said northeast quarter section ever since November, 1843, the whole thereof being under fence
30 and cultivated; and that for the years 1844 to 1868 inclusive, they and their grantors paid all taxes and assessments levied and assessed on or against said land, they and their grantors paying respectively, when they respectively held said land under such title.

To the introduction and reading to the jury of all which said evidence of tax-title and proof of possession and cultivation of said land and payment of taxes by the occupants thereof plaintiff at the time objected, but the court overruled said objection and allowed said evidence to go to the jury, and the plaintiff at the time excepted to such ruling of the court.

It was duly proved that the land in controversy, at the time of the trial, was worth more than five thousand dollars ($5,000).

Here defendants rested.

And the plaintiff then offered and read in evidence to the jury, under permission of the court, but against the defendants' objection for irrelevancy, a deed, in due form, from Thomas Hart to Samuel F. Hunt, dated 12th day of May, A. D. 1824; also a deed from Samuel F. Hunt to Eli B. Clemson, dated 7th day of April, A. D. 1825, each for the south-
31 east quarter of aforesaid section eighteen.

And the plaintiff then offered and read in evidence under like objection on the part of defendants for irrelevancy, &c., a deed in due form from Eli B. Clemson to John Shaw, dated 20th day of October, A. D. 1829, for said southeast quarter of aforesaid section eighteen.

The plaintiff then, under defendants' objection for irrelevancy, offered and read in evidence the following act of Congress, vol. 6, United States Statutes at Large, page 366, "An act for the relief of the legal representatives of Giles Egerton."

Be it enacted, &c., That the legal representatives or assignees of Giles

Egerton, late a sergeant in Cotton's Company of the Twenty-sixth Regiment of Infantry be, and he or they is or are hereby authorized to enter with the register of the proper land office, any unappropriated quarter section of land in the tract reserved for the satisfaction of military bounties, in the State of Illinois, in lieu of the quarter patented to said Giles on the tenth day of January, one thousand eight hundred and eighteen, which had been previously patented to James Durney; and upon such entry a patent shall issue to such representative or assignee for the quarter-section so selected. Approved March 3, 1827."

32 The plaintiff thereupon proved, under defendants' objection, that John Shaw, assignee of Giles Egerton, on the 6th day of April, A. D. 1838, entered with the register of the land office at Quincy, Illinois, the northwest quarter of section 28, town. 5 N., range 5 W. of 4th p. m., in pursuance of the foregoing act of Congress. The plaintiff then offered in evidence a patent in due form, dated January 10th, 1818, issued by the United States, granting to Giles Egerton the southeast quarter of section eighteen (18), in township four (4) north, range two (2) east, in the tract of land appropriated for military bounties, in the Territory of Illinois, in which patent the said Egerton is described as "late a sergeant in Cotton's Company of the 26th Regiment of Infantry," and in which patent it is recited: "Giles Egerton having deposited in the General Land Office a warrant in his favor, numbered 13598, there is granted unto the said Giles Egerton," &c. To the reading of which patent so issued to said Egerton the defendants then objected as being irrelevant; but the court overruled such objec-
33 tion and permitted said patent to be read in evidence to the jury.

And here the plaintiff again rested and this was all the evidence offered or heard on behalf of any of the parties in this cause.

And the plaintiff then asked the court to give to the jury the following instructions, to wit:

"1st. The jury are instructed the plaintiff has by legal evidence shown title in himself in fee-simple to the land in controversy, and that the defendants have not shown outstanding title in Giles Egerton, or any one claiming under him, and therefore the plaintiff is entitled to recover.

"2nd. The jury are instructed that the limitation laws of Illinois do not confer any rights upon defendants in this cause, except so far as such laws may apply, and rights accrue thereunder since the issue of the patent to Leonard.

"3rd. The jury are instructed that no tax-title to the land in controversy could accrue under the laws of Illinois prior to the issue of the patent to Leonard."

But the court refused to give such instructions or any of them
34 to the jury, to which refusal the plaintiff did then and there except.

And the defendants then asked the court to give to the jury the following instructions, to wit:

"1st. The jury are instructed that the defendants have proved that the land in controversy was granted by the United States to Giles Egerton on the 10th day January, 1818, and that said Egerton, in July, 1819, granted and conveyed the same to Thomas Hart, which conveyance constitutes an outstanding title that defeats the plaintiff's right of recovery, and the verdict should be for the defendants.

"2nd. The jury are also instructed that the defendants have shown that on the 10th day of January, 1818, the land-warrant in favor of Giles

Egerton was duly located on and upon the land in controversy, which location is not shown to have been vacated or set aside, and therefore said land was not subject to entry by or grant to Edward F. Leonard in 1868, and the finding should be for the defendants."

35 To the giving of which said instructions asked by defendants the plaintiff objected; but the court overruled the objection of plaintiff and gave said instructions to the jury, and the plaintiff then and there excepted to the ruling of the court in giving each of said instructions for defendants. And the jury thereupon rendered a verdict of "not guilty" for defendants, to which the plaintiff then and there excepted; and thereupon moved the court for a new trial, and assigned the following reasons therefor:

1st. The court admitted improper evidence for defendants.

2nd. The court gave improper instructions to the jury at the instance of defendants.

3rd. The court improperly refused to give to the jury the instructions asked by plaintiff.

4th. The court refused proper evidence offered by plaintiff.

5th. The verdict of the jury is against the law.

6th. The verdict of the jury is against the law and evidence.

7th. The verdict of the jury is against the evidence.

36 8th. The court improperly refused to give each one of the instructions asked by plaintiff.

But the court overruled said motion for a new trial and refused to grant the same; to which ruling of the court the plaintiff did then and there except. And the court thereupon rendered judgment upon the verdict that defendants were not guilty, &c., and against the plaintiff for the costs of suit; to all which the plaintiff did then and there except.

And because these matters do not sufficiently appear of record, the plaintiff prays that this his bill of exceptions may be signed and sealed and made of record, which is accordingly done.

[SEAL.] S. H. TREAT.

(Indorsed:) Filed June 23, A. D. 1875. J. A. Jones, clerk.

And afterwards, to wit, on the fourth day of August, in the year last aforesaid, came again the plaintiff and filed, in the clerk's office of said court, his bond on writ of error herein, in the words and figures following, to wit:

37 *Bond.*

JACOB WIRTH
v.
CALVIN BRANSON AND NATHAN LINDSEY. } Ejectment.

Know all men by these presents that we, Jacob Wirth, as principal, and Charles Baumgartner, as surety, are held and firmly bound unto the above-named Calvin Bransom and Nathan Lindsey in the sum of five hundred dollars, to be paid to the said Calvin Bransom and Nathan Lindsay, their executors or administrators; to which payment, well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our heirs, executors, and administrators firmly by these presents, sealed with our seals and dated this second day of August, A. D. 1875.

Whereas the above-named Jacob Wirth hath prosecuted a writ of

error to the Supreme Court of the United States of America to reverse the judgment rendered in and by the circuit court of the United States for the southern district of Illinois in a certain suit wherein Jacob Wirth is plaintiff and Calvin Bransom and Nathan Lindsey are defendants:

Now, therefore, the condition of this obligation is such that if the said Jacob Wirth shall prosecute his said writ of error to effect
38 and answer all damages and costs if he shall fail to make good his plea, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

JACOB WIRTH, [SEAL.]
By CHA'S BAUMGARTNEN,
His Attorney in fact.
CHA'S BAUGARTEN. [SEAL.]

Approved.

S. H. TREAT,
Dist. Judge.

(Endorsed:) Filed August 4th, 1875. J. A. Jones, clerk.

UNITED STATES OF AMERICA,
Southern District of Illinois, ss:

I, J. A. Jones, clerk of the circuit court of the United States for the southern district of Illinois, do hereby the foregoing is a true and complete transcript of the papers filed and proceedings thereon had (together with a printed copy of the record heretofore sent up and
39 hereto attached) in a certain cause wherein Jacob Wirth is plaintiff and Calvin Branson and Nathan Lindsey are defendants, as the same appear of file and record in my said office.

In witness whereof I have hereunto set my hand and seal of said court, at Springfield, in said district, this ninth day of October, in the year of our Lord one thousand eight hundred and seventy-five, and of our Independence the one hundredth year.

[SEAL.] J. A. JONES, *Clk.*

(Indorsement on cover:) No. 330. Jacob Wirth, plaintiff in error, vs. Calvin Branson and Nathan Lindsey. S. Illinois C. C. U. S. Filed 22nd December, 1875.